

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA)
BUMPUS, RONALD BIENDSEIL, LESLIE W.)
DAVIS, III, BRETT ECKSTEIN, GLORIA)
ROGERS, RICHARD KRESBACH, ROCHELLE)
MOORE, AMY RISSEEUEW, JUDY ROBSON, JEANNE)
SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS)
THYSSEN, CINDY BARBERA, RON BOONE, VERA)
BOONE, EVANJELINA CLEERMAN, SHEILA)
COCHRAN, MAXINE HOUGH, CLARENCE JOHNSON,) Case No. 11-CV-562
RICHARD LANGE, and GLADYS MANZANET,) JPS-DPW-RMD
)
Plaintiffs,) Milwaukee, Wisconsin
)
TAMMY BALDWIN, GWENDOLYNNE MOORE and) February 23, 2012
RONALD KIND,) 7:15 p.m.
)
Intervenor-Plaintiffs,) **VOLUME VI**
) **EVENING SESSION**
v.)
)
Members of the Wisconsin Government)
Accountability Board, each only in his)
official capacity: MICHAEL BRENNAN,)
DAVID DEININGER, GERALD NICHOL, THOMAS)
CANE, THOMAS BARLAND, and TIMOTHY VOCKE,)
and KEVIN KENNEDY, Director and General)
Counsel for the Wisconsin Government)
Accountability Board,)
)
Defendants,)
)
(caption continued on next page))

TRANSCRIPT OF COURT TRIAL

BEFORE DIANE WOOD, CIRCUIT JUDGE, ROBERT DOW, JR., DISTRICT
JUDGE, and J. P. STADTMUELLER, DISTRICT JUDGE

Contract Reporters: Halma-Jilek Reporting 414-271-4466

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1 F. JAMES SENSENBRENNER, JR., THOMAS E.)
 2 PETRI, PAUL D. RYAN, JR., REID J.)
 3 RIBBLE, and SEAN P. DUFFY,)

Intervenor-Defendants.)

4 _____)
 5 VOCES DE LA FRONTERA, INC., RAMIRO)
 6 VARA, OLGA VARA, JOSE PEREZ, and)
 7 ERICA RAMIREZ,)

Plaintiffs,)

v.) Case No. 11-CV-1011

8) JPS-DPW-RMD
 9 Members of the Wisconsin Government)
 10 Accountability Board, each only in his)
 11 official capacity: MICHAEL BRENNAN,)
 12 DAVID DEININGER, GERALD NICHOL, THOMAS)
 13 CANE, THOMAS BARLAND, and TIMOTHY)
 14 VOCKE, and KEVIN KENNEDY, Director and)
 15 General Counsel for the Wisconsin)
 16 Government Accountability Board,)

Defendants.)

17 A P P E A R A N C E S

18 For the Plaintiffs:

DOUGLAS M. POLAND

Godfrey & Kahn, S.C.
 780 North Water Street
 Milwaukee, WI 53202-3590
 414-273-3500
 Fax: 414-273-5198
 Email: dpoland@gklaw.com

DUSTIN B. BROWN

Godfrey & Kahn, S.C.
 1 East Main Street - Suite 500
 Madison, WI 53701-2719
 608-257-3911
 Fax: 608-257-0609
 Email: dbrown@gklaw.com

1 FOR THE CONSOLIDATED
2 PLAINTIFFS:

JACQUELINE E. BOYNTON

Law Offices of Jacqueline Boynton
2266 N. Prospect Ave - Ste. 505
Milwaukee, WI 53202-6306
414-276-1066
Fax: 414-276-9119
Email: jackie@jboynton.com

PETER G. EARLE

Law Offices of Peter Earle, LLC
839 North Jefferson - Suite 303
Milwaukee, WI 53202
414-276-1076
Fax: 414-276-0460
Email: peter@earle-law.com

9 FOR THE DEFENDANTS:

DANIEL KELLY

Reinhart Boerner Van Deuren, S.C.
1000 North Water Street
Milwaukee, WI 53202
414-298-1000
Fax: 414-298-8097
Email: dkelly@reinhartlaw.com

PATRICK J. HODAN

Reinhart Boerner Van Deuren, S.C.
1000 North Water Street
Milwaukee, WI 53202
414-298-1000
Fax: 414-298-8097
Email: phodan@reinhartlaw.com

COLLEEN E. FIELKOW

Reinhart Boerner Van Deuren, S.C.
1000 North Water Street
Milwaukee, WI 53202
414-298-1000
Fax: 414-298-8097
Email: cfielkow@reinhartlaw.com

MARIA S. LAZAR

Wisconsin Department of Justice
Office of Attorney General
17 West Main Street
Madison, WI 53707-7857
608-267-3519
Fax: 608-267-2223
Email: lazarms@doj.state.wi.us

1 FOR INTERVENOR PLAINTIFFS:

SCOTT HASSETT

Lawton & Cates, S.C.
10 East Doty Street - Suite 400
P.O. Box 2965
Madison, WI 53701-2965
608-282-6200
Fax: 608-282-6252
Email: shasset@lawtoncates.com

2
3
4
5 FOR THE INTERVENOR
6 DEFENDANTS:

KELLEN C. KASPER

Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5300
414-297-5783
Fax: 414-297-4900
Email: kkasper@foley.com

THOMAS L. SHRINER, JR.

FOLEY & LARDNER, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5300
414-297-5601
Fax: 414-297-4900
Email: tshriner@foley.com

10
11
12
13
14 FOR THE MOVANTS:

JOSEPH LOUIS OLSON

Michael Best & Friedrich, LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-4108
414-271-6560
Fax: 414-277-0656
Email: jlolson@michaelbest.com

1 P R O C E E D I N G S

2 THE BAILIFF: The court is now in session. Please be
3 seated and come to order tests.

4 JUDGE STADTMUELLER: Let the record reflect that we
5 are back on the record for some recordkeeping purposes. My
6 staff advised the panel that counsel wanted to make some
7 matters of record following the Court's comments at the end of
8 our trial day a little more than an hour ago. So beginning
9 with you, Mr. Poland, if you and your colleagues would like to
10 make those matters of record, now is your opportunity.

11 MR. POLAND: Thank you, Your Honor. Yes, Mr. Brown
12 and I have been conferring with opposing counsel on claims that
13 we might be able to pare down or drop entirely before further
14 taking of evidence tomorrow and argument, and what we have
15 agreed to dismiss are, and this is from our Second Amended
16 Complaint, would be our second claim, which is captioned,
17 "Legislation does not recognize local government boundaries."
18 Our fourth claim, which is congressional districts are not
19 compacted and fail to preserve communities of interest. Our
20 fifth claim, congressional and legislative districts constitute
21 unconstitutional gerrymandering. We will retain our sixth
22 claim, which is legislative districts violate the Federal
23 Voting Rights Act only with respect to the Latino districts.
24 We will drop the claim with respect to the African-American
25 districts or with respect to any other districts. So just the

1 Latino districts. We will drop our seventh claim, which is
2 legislative districts unconstitutionally use race as a
3 predominant factor, and then we are going to retain the other
4 claims.

5 Your Honor, if I could also just speak to Judge
6 Stadtmueller. One of the comments you had made as we were
7 leaving, as we were adjourning, you mentioned Count 9, and the
8 only aspect of that that I intend to argue would be to make a
9 waiver argument during closings tomorrow.

10 JUDGE STADTMUELLER: All right. Thank you.
11 Mr. Kelly, Mr. Hodan, Ms. Lazar, do you have anything more you
12 would like to make of record?

13 MS. LAZAR: Yes, Your Honor, thank you. I got the
14 unenviable task of trying to determine who's going to do what
15 and how long they are going to do it, and we have come up with
16 a short list that has us starting at 8:30, taking the taking
17 the two regular breaks you scheduled, a lunch break and then
18 going through everything, adding a little bit of time for
19 exhibits and housekeeping, which would bring us up to 6:50, and
20 that's if things go as long as we have determined. Then we
21 would propose a 30-minute break to 7:20, and then we would
22 propose closings that would take us to 9:05. Of course, this
23 is -- I mean, if we can compress some things now that some of
24 these things have been dropped, we can shorten that, but we
25 have come to agreements that we would try to keep things within

1 the bounds, and if they go a little bit over, that's okay, but
2 we would try to stop if it's going to be like a lot over any of
3 those areas. I can give the court, I can draft up or rewrite,
4 since it's pretty sloppy now, what our kind of deadlines are
5 for each of these, if the court wants to see that.

6 THE COURT: Certainly. I think it would be helpful
7 for us if we had the order of the witnesses and the like. I
8 appreciate, and I speak for Judge Wood and Judge Dow, as well,
9 our collective sincere appreciation for your efforts to narrow
10 this a bit more, and we will be guided accordingly. Now, to
11 the extent that you have individuals coming into the building
12 after 5:15 tomorrow, whether it's sandwiches for your evening
13 break or the like, you need to make that known to one of the
14 Court's security officers so that if somebody appears at the
15 front door or the side door preferably, in fact, the front door
16 will probably be closed and everybody will be directed to the
17 Jackson Street entrance, as to what time those deliveries might
18 be made so we don't have any problems with access to the
19 building. Mr. Shriner, do you have anything you would like to
20 add?

21 MR. SHRINER: No, Your Honor. I indicated to counsel
22 that I would intend to take no more than about 15 minutes on
23 closing, and I guess I get to wait until the end of the day to
24 do that, but I will let Mr. Hassett and Mr. Olson know of what
25 the arrangements are so they can come back, but the claims as

1 to Act 44 are all gone, except by the Intervenor Defendants, so
2 I guess we ought to talk about them then.

3 JUDGE STADTMUELLER: All right.

4 MR. POLAND: Your Honor, if I could just make one
5 note there, as well. We have not spoken with Mr. Hassett and
6 Mr. Olson. We are dropping our congressional district claims,
7 But that's not having consulted with them first, so --

8 JUDGE STADTMUELLER: Certainly.

9 MR. POLAND: -- they would need to be contacted.

10 MS. LAZAR: Your Honor's, I can tell you before I
11 write all this out what the order of witnesses would be, if
12 that would be of interest right now. I can list them off.

13 JUDGE STADTMUELLER: Certainly.

14 MS. LAZAR: We would start with Professor Mayer,
15 Dr. Morrison, Professor Gaddie, Professor Grafman, and then we
16 are done. We will also, if the court allows, instead of doing
17 some read-ins of any depositions, we would just do the new one
18 that took place, we would just do designations of that one
19 instead of having that read in to save time, as well.

20 JUDGE STADTMUELLER: Certainly. And to the extent
21 that any of these experts overlap, I think it would be helpful
22 if you simply summarize the report in your summation so we
23 don't have to go through the same series of building blocks a
24 second time. Now there may be some nuances and differences and
25 analysis that may impact on how one expert's findings may

1 differ from another, even though supportive of the Defendants'
2 positions. I don't want to cut anybody off in that regard, but
3 to the extent that they are purely duplicative, I don't think
4 that's going to be terribly helpful to the Court's
5 decision-making process.

6 MS. LAZAR: In that regard I did forget to mention we
7 have agreed that we will do a stipulation about John Diaz and
8 not have him testimony at all.

9 JUDGE STADTMUELLER: All right.

10 MS. LAZAR: I will rewrite this list and provide it
11 to the Court before I leave today.

12 JUDGE STADTMUELLER: All right. Well, since
13 everyone, including you, need either to get home or take care
14 of other obligations, you can simply submit it in the morning
15 when you arrive.

16 MS. LAZAR: Thank you.

17 JUDGE STADTMUELLER: There's no need to do it this
18 evening. Mr. Turlach will ensure that all of you get out
19 appropriately without having to breach any of the innumerable
20 security devices. With those thoughts, Judge Wood, do you have
21 anything?

22 JUDGE WOOD: No, thank you.

23 MR. SHRINER: I don't know if there are any Cub fans
24 on the bench, but I hope you heard that Braun is not going to
25 sit out the first 50 days.

1 JUDGE DOW: There's no Cub fans on this side of the
2 bench.

3 JUDGE STADTMUELLER: And it would appear that
4 Mr. Braun is the luckiest man in the world because the Fed Ex
5 office wasn't open.

6 (A discussion was had off the record.)

7 THE BAILIFF: All rise.

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1 UNITED STATES DISTRICT COURT)
2) SS
3 EASTERN DISTRICT OF WISCONSIN)
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6 I, KATHY A. HALMA, Official Court Reporter for the
7 United States District Court, Eastern District of Wisconsin, do
8 hereby certify that I reported the foregoing proceedings and
9 that the same is true and correct in accordance with my
10 original shorthand notes taken at said time and place.
11
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13 _____
14 KATHY A. HALMA
15 Official Court Reporter
16 United States District Court
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